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July 21, 2000

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EX PARTE COMMENTS

UNIVERSAL SERVICE SUPPORT MECHANISM FOR SCHOOLS AND LIBRARIES

CC DOCKET NO. 96-45

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Kennard:

On behalf of state education officials involved in coordinating the Universal Service Program (E-rate) on the state level, I am writing to bring to your attention three very serious situations that represent inequities in the program and need your immediate attention.

The first is a situation where hundreds of applicants have been denied funding based on an erroneous decision by Program Integrity Assurance (PIA) reviewers. Several state E-rate coordinators brought the mistake to the attention of the SLD staff, but unfortunately for most applicants, their 30-day mandated appeal window already had expired, thus leaving them with an improperly denied application and no possible means of recourse given the Commission's rule allowing only a very narrow 30-day period for appeals. As you know, this appeal rule is strictly enforced, even in situations where the fault lies solely with the program administrator.

Specifically, the situation involves erroneous interpretations by PIA staff that determined that the Cisco 2500 series router should be classified as a remote access server, thus making it ineligible. The 2500 router has more than 30 difference models, most of which are standard routers, and are eligible. Several of these routers allow the addition of an optional module that serves as a modem bank, and once added and used, the router then becomes ineligible. This optional equipment is not part of the standard eligible router. Because it has the capacity to become an ineligible item by adding the modem bank, the PIA staff determined that all such Cisco routers were ineligible – something they now admit was an error.

In making these decisions, two mistakes were made: 1) an assumption was made about an item on an application without first contacting the applicant to determine if the purpose of the router was to be used for remote access; and 2) that an item on the E-rate "Eligible Services List"

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Presented by NANCY KEENAN, Montana Superintendent of Public Instruction • President Elect PETER MCWALTERS, Rhode Island Commissioner of Education • Vice President ROBERT E. BARTMAN, Missouri Commissioner of Education • Director JUDY CATCHPOLE, Wyoming Superintendent of Public Instruction • DOUGLAS D. CHRISTENSEN, Nebraska Commissioner of Education • MARY L. PETERSON, Nevada Superintendent of Public Instruction • SUELLEN K. REED, Indiana Superintendent of Public Instruction • TED STELWILL, Iowa Director of Education • MICHAEL E. WARD, North Carolina Superintendent of Public Instruction • Executive Director GORDON M. AMBACH

was reclassified from eligible to ineligible after the 471 application window had closed. It was not until May 25, 2000 that the Universal Services Administrative Company ["USAC"] admitted that mistakes had been made by PIA reviewers and issued a notice on its web site – a full month and a half after administrative decision denials had been mailed.

Because so many applicants are affected by these administrator errors, we ask the Commission to be proactive in rectifying the situation by designing an expedited correction process for the affected applicants that is not bound by the lengthy appeal process. If the Commission decides that the administrator cannot correct these mistakes outside the appeals process, we strongly encourage the Commission to do the following:

- 1) Require the administrator to personally contact every affected applicant notifying them that errors were made in the review of their application and that they should appeal the ruling based on the notice that was posted to the USAC web site on May 25, 2000.
- 2) Provide affected applicants with an additional 30 days to file their appeal following such a notice by the administrator.

Further, we ask the Commission to:

- 1) Direct the program administrator to not change the eligibility status of items during or after the application window has closed.
- 2) Direct the administrator to be as specific as possible in its eligible services list. It would help applicants immensely if items would be clearly defined and when ineligible, provide examples or reasons why the item is ineligible. Currently, there are substantial variances to how applicants interpret items on the eligible services list and how PIA reviewers are actually determining the services listed in their applications.

A second situation that concerns many of the program's applicants involves a matter that the Council of Chief State School Officers (CCSSO) and the American Library Association (ALA) raised in a letter to the Federal Communications Commission on March 16, 2000. That letter provided comment on the recent "Copan decision," but also appealed for immediate action relating to assisting E-rate applicants that need to change service providers and the dissemination of information associated with the Commission's decision on the Copan Public Schools appeal [Order of March 16, 2000 in CC 97-45, 97-21]. CCSSO and the ALA supported the Commission's initial decision and cited the fact that the modification of categories of permissible changes of service providers complemented and reinforced existing state and local procurement rules for contracts for telecommunications and other related services. Our concern is that the Commission's slow pace in making a decisive and consistent ruling on this matter creates a needless burden on many school and library applicants that wish to proceed with service providers that best meet their respective needs.

All applicants that submitted SPIN changes in the last 6 months, even under the pre-Copan rules, have been left in the precarious position of needing to change providers, requesting permission to do so, having the funding year close, but having not received a decision by the

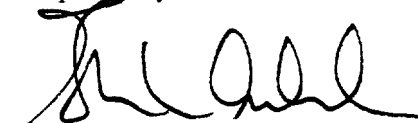
SLD whether or not such a change is permitted. We anticipate that because of this inaction, most of these applicants may be forced to forfeit discounts and savings incurred while their SPIN change requests are pending at the SLD. Because of the immense frustration that is growing at the applicant level concerning the SPIN change issue, we again strongly encourage the Commission to act quickly on a new SPIN change decision.

A third area of concern relates to an SLD policy of arbitrary and misguided re-categorization of service requests. The Council notes with concern the number of applicants that were denied funding for Internet Access services in program year three because they inadvertently included in their request a small percentage of the support request for what the SLD considered more properly to be an internal connection service, e.g., a router use fee. In such cases, the SLD adopted a policy of reclassifying the entire funding approval notification as internal connections to "avoid the possibility" of treating priority two services as priority one. Assuming the applicant had a discount rate of 80 percent or lower, this action had the effect of denying funding for the entire Internet Access service.

What makes this policy arbitrary and difficult to defend is a similar policy in effect that says the SLD will personally work with each applicant if a service category contains ineligible items up to a total of 30 percent. So on one hand the SLD will work closely with an applicant to remove a request for *ineligible* items, but will not do so to remove the small *eligible* items that were mistakenly classified as internet access. Please note that applicants are grateful for the policy of the SLD staff assisting them to move any inadvertently included ineligible items – something that is quite easy to do under the rules of this program. However, applicants should expect a reasonable amount of understanding and technical assistance that would help them to remove priority two items that have polluted a priority one service, and thus doomed the whole request to priority two, a decision that ensures a denial of funding for too many otherwise eligible applications.

Thank you for your consideration of these important issues that are affecting thousands of E-rate applicants.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Ambach", written over a horizontal line.

Gordon M. Ambach
Executive Director

Attachment A

The Universal Service Administrative Company's "Program Integrity Assurance" ["PIA"] reviewers determined that the Cisco 2500 series router should be classified as a remote access server, thus making it ineligible.

The 2500 router has more than 30 difference models, most of which are standard routers, and are eligible. The Cisco 2500 series router has a model that will allow the addition of an optional module that serves as a modem bank. This optional equipment which can be purchased separately provides a capacity for individuals to dial into the router directly, thus making the router then ineligible. But just because a router has the capacity to have an ineligible item to it does not make it ineligible in itself.

Thus, what appears to be a system routers actually perform the function of an access server. There are many cases where a school district, even before e-rate was authorized, would install a 2514 series router along with a modem bank, to provide dial-up internet access to schools in the district that could not afford their own dial-up or dedicated access. In many instances these pieces of equipment are now simply performing the function of a router. At this juncture, these districts should not be asked to discard the Cisco router and to purchase another model that does not include a modem bank. We would hope the school district could simply remove the dial-up lines that connect to the router and, thus, eliminate the remote access capability. The only portion of the Cisco 2500 series router that should be ineligible is the optional modem bank, according to the Eligible Service List.

Copies of the foregoing letter have been sent via messenger and/or first-class mail to the parties below:

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